

COURT OF CRIMINAL APPEALS No.

CR-01-2444

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

CIRCUIT COURT NO. CC 01-30.60 & CC 01-36.60

CIRCUIT JUDGE HON. GEORGE R. GREENE

Type of Conviction / Order Appealed From: PETITION FOR RULE 32

Sentence Imposed: DISMISSED

Defendant Indigent: ☒ YES ☐ NO

ROY DAVID HEATH

ROY DAVID HEATH AIS#21734\$

NAME OF APPELLANT

(Appellant's Attorney)

FOUNTAIN 3800

(Telephone No.)

(Address)

ATMORE, AL 36503-3800

(City)

(State)

(Zip Code)

V.

STATE OF ALABAMA

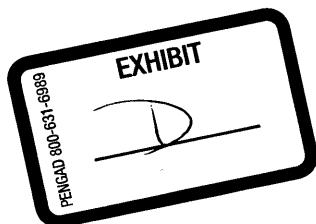
(State represented by Attorney General)

NAME OF APPELLEE

NOTE: If municipal appeal, indicate above, and enter
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)

1/7/03 - Dismissed on motion of
the appellant.



5947
1/20

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[illegible]

MAY 20 REC'D 000003

Case Number 01-30736-60
 CC- 01 - (307) 36 . 60
 ID YR NUMBER
 (To be completed
 by Court Clerk)

IN FORMA PAUPERIS DECLARATION

IN THE CIRCUIT COURT OF RUSSELL COUNTY

[Insert appropriate court]

ROY DAVID HEATH AIS #217344

(Petitioner)

vs.

STATE OF ALABAMA

(Respondent(s))

**DECLARATION IN SUPPORT OF REQUEST TO PROCEED
IN FORMA PAUPERIS**

I, ROY DAVID HEATH, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes _____ No X

a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

N/A

b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

March 15, 2001

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession, or other form of self-employment?

Yes _____ No X

b. Rent payments, interest, or dividends?

Yes _____ No X

c. Pensions, annuities, or life insurance payments?

Yes _____ No X

d. Gifts or inheritances?

Yes _____ No X

e. Any other sources?

Yes _____ No X

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If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

N/A

3. Do you own cash, or do you have money in a checking or savings account?

Yes _____ No X

(Include any funds in prison accounts.)

If the answer is "yes", state the total value of the items owned.

N/A

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes _____ No X

If the answer is "yes", describe the property and state its approximate value.

N/A

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support...

Wife

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 5/19/02
(Date)

Roy David Heath
Signature of Petitioner

Roy David Heath, 217344

CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ 02/00 on account to his credit at the institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said Fountain Carr. Center institution:

See attached monthly averages printout.

5-21-02
DATE

Sylvia D. Hansen
AUTHORIZED OFFICER OF INSTITUTION

STATE OF ALABAMA
DEPARTMENT OF CORRECTIONS
FOUNTAIN CORRECTIONAL CENTER

000005

AIS #: 217344

NAME: HEATH, ROY DAVID

THESE FIGURES ARE AS OF: 05/20/2002

MONTH	# OF DAYS	AVG DAILY BALANCE	MONTHLY DEPOSITS
NOV	10	\$0.56	\$0.00
DEC	31	\$5.84	\$40.00
JAN	31	\$9.36	\$115.00
FEB	28	\$10.86	\$110.00
MAR	31	\$6.59	\$60.00
APR	30	\$7.04	\$80.00
MAY	20	\$4.18	\$60.00

Average 6 Months Balance

\$7.41

\$77.50

Sylvia D. Harrelson
Sylvia D. Harrelson, PMOD Clerk

STATE OF ALABAMA, ESCAMBIA COUNTY, SWORN TO AND SUBSCRIBED BEFORE ME THIS
20th DAY OF MAY, 2002.

J Patrick McKay, Notary Public

MY COMMISSION EXPIRES OCT. 25, 2004

000006

IN THE CIRCUIT COURT OF RUSSELL COUNTY
FOR THE TWENTY-SIXTH JUDICIAL DISTRICT
PHENIX CITY, ALABAMA

ROY DAVID HEATH,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

)
)
)
)
)
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)

Case No. CC-01-030.60
CC-01-036.60

MOTION TO PROCEED IN FORMA PAUPERIS

COMES NOW THE Petitioner, Roy David Heath, by and through himself, in the above-styled cause, wherein a judgment of conviction and sentence for the crime(s) of Distribution of Controlled Substances (x2) and the Unlawful Possession of Marijuana; first degree were entered against him on May 31, 2001, and informs this Honorable Court that he desires to seek relief from his conviction and sentence before this Court.

The Petitioner is incarcerated and serving a thirty (30) year prison term and thus is wholly without funds to pay the filing fee(s) for such an action or such other costs and expenses which may be necessarily incurred in the adjudication of his Rule 32 Petition, as is more fully shown by the attached Declaration of In Forma Pauperis.

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WHEREFORE, PREMISES CONSIDERED, Petitioner prays that an Order be entered herein finding him to be an indigent person, authorizing him to proceed with his Rule 32 Petition seeking relief from the conviction and sentence of this Court, in forma pauperis, and authorizing the waiving of all filing fees and costs pertaining to this action.

Respectfully submitted this the 31 day of MAY, 2002.

X Roy Heath

Roy David Heath, Petitioner pro se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion was mailed to the District Attorney of Russell County, by placing the same in a pre-paid postage affixed and properly addressed envelope, and depositing the same in the United States Mail on: MAY 31, 2002.

X Roy Heath

Roy David Heath, Petitioner pro se

AIS #217344, Dorm #7

Fountain Correctional Center

Fountain 3800

Atmore, Alabama 36503-3800

SERVICE TO:

Office of the District Attorney
Russell County, Alabama
Russell County Courthouse
501 14th Street
Phenix City, Alabama 36867

PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

000008

(Pursuant to Rule 32,
Alabama Rules of Criminal Procedure)

Case Number: 060

CC - 01- 030, 036

ID	YR	NUMBER

IN THE _____ CIRCUIT _____ COURT OF _____ RUSSELL _____ ALABAMA

ROY DAVID HEATH _____ vs. _____ STATE OF ALABAMA _____
Petitioner (Full Name) _____ Respondent _____

[Indicate either the "State" or,
if filed in municipal court, the
name of the "Municipality"]

Prison Number AIS #217344 _____ Place of Confinement Fountain Corr. Center _____

County of conviction Russell County, Alabama _____

**NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY
THE ACCOMPANYING INSTRUCTIONS.**

- Name and location (city and county) of court which entered the judgment of conviction or sentence under attack
Russell County Circuit Court
Phenix City, Alabama
- Date of judgment of conviction May 31, 2001
- Length of sentence Thirty Years (30) each count
- Nature of offense involved (all counts) Distribution of Marijuana (CC-01-30)
Distribution of a Controlled Substance (CC-01-36) (Count 1)
Possession of Marijuana (CC-01-36) (Count 2)
- What was your plea? (Check one)
 - Guilty X
 - Not guilty _____
 - Not guilty by reason of mental disease or defect _____
 - Not guilty and not guilty by reason of mental disease or defect _____

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6. Kind of trial: (Check one)

(a) Jury _____

(b) Judge only _____

7. Did you testify at the trial?

Yes _____

No ☒ _____

8. Did you appeal from the judgment of conviction?

Yes ☒ _____

No _____

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court Circuit Court of Russell County, Alabama

(2) Result Anders brief filed - appeal not perfected

(3) Date of result Appeal dismissed on January 29, 2002

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court N/A

(2) Result N/A

(3) Date of result N/A

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court N/A

(2) Result N/A

(3) Date of result N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? **000010**

Yes _____ No X

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No X

(5) Result N/A

(6) Date of result N/A

- (b) As to any second petition, application, or motion, give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised N/A

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No X

(5) Result N/A

(6) Date of result N/A

- (c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(1) Name of court N/A

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(2) Nature of proceeding N/A(3) Grounds raised N/A

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No X(5) Result N/A(6) Date of result N/A

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes _____ No X(2) Second petition, etc. Yes _____ No X(2) Third petition, etc. Yes _____ No X

**ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.**

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

N/A

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

GROUNDS OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

- X A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:

- (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

X B. The court was without jurisdiction: or under the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

The facts do not merely amount to impeachment evidence; and

The facts had been known at the time of trial or sentencing, the result would probably have been
different and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

_____ F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes _____ No X

B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court N/A

(b) Result N/A

(c) Date of result N/A
(attach additional sheets if necessary)

C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes _____ No X

15. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

- (a) At preliminary hearing John Britton
P.O. Drawer 1188, Phenix City Alabama 36868-1188
- (b) At arraignment and plea -same as "(a)"
- (c) At trial -same as "(a)"
- (d) At sentencing same as "(a)"
- (e) On appeal Charles E. Floyd III
1000 14th Street, P.O. Box 759 Phenix City, Alabama 36868-0759
- (f) In any post-conviction proceeding N/A
- (g) On appeal from adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes X No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No X

- (a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

- (b) And give date and length of sentence to be served in the future:

N/A

- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No X

18. What date is this petition being mailed?

May 31, 2002

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

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PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on 5-31-02
(Date)

Roy Heath
Signature of Petitioner

Roy David Heath, 217344

SWORN TO AND SUBSCRIBED before me this the 31st day of May, 192002.

Richard D. Heath
Notary Public

OR *

ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I Swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true

and correct. Executed on _____
(Date)

Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 19____.

Notary Public

Name and address of attorney representing petitioner
in this proceeding (if any)

FILED IN OFFICE
2002 JUN -6 PM 1:20
CIRCUIT COURT
HONOLULU, HAWAII

000016

IN THE CIRCUIT COURT OF RUSSELL COUNTY
FOR THE TWENTY-SIXTH JUDICIAL DISTRICT
PHENIX CITY, ALABAMA

ROY DAVID HEATH,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

Case No. CC-01-030.60
CC-01-036.60

PETITION FOR RELIEF FROM CONVICTION AND SENTENCE
PURSUANT TO RULE 32, A.R.CRIM.P.
ATTACHMENT TO THE FORM

Petitioner Roy David Heath brings this post-conviction action pursuant to Rule 32, Alabama Rules of Criminal Procedure, and submits the following for this Honorable Court's consideration:

INTRODUCTION

Petitioner Roy David Heath was arrested on or about May 4, 2000 for the Unlawful Distribution of Controlled Substances in Case No. CC-01-030. Petitioner Roy David Heath was also charged on May 4, 2000 with the Unlawful Distribution of Controlled Substances and Unlawful Possession of Marijuana; first degree in Case No. CC-01-036. The Russell County Grand Jury, (January 2001 Term), indicted the Petitioner on these charges in two (2) separate indictments on January 12, 2001.

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The Hon. John Britton represented the Petitioner on the pending charges of the Unlawful Distribution of Controlled Substances (x2), a violation of Section 13A-12-211, of the Code of Alabama 1975, and the Unlawful Possession of Marijuana; first degree, a violation of Section 13A-12-213, of the Code of Alabama 1975.

The Petitioner, with retained attorney John Britton, appeared at the Arraignment of the Petitioner on February 16, 2001 and the Petitioner waived a reading of the indictment(s) in open Court and entered a plea of not guilty on all counts.

On April 9, 2001, Petitioner Heath and Attorney Britton appeared before the Circuit Court of Russell County to withdraw his plea of not guilty on all counts and entered a plea of guilt to the offense(s) of Distribution of Controlled Substances (x2) and the Unlawful Possession of Marijuana; first degree. The Court allowed Petitioner Heath to withdraw his plea(s) of guilt on all counts and a Sentencing Hearing was scheduled for May 31, 2001.

The Petitioner was sentenced on May 31, 2001 and his punishment was fixed for the offense of Distribution of Controlled Substances (Count One, CC-01-036), under the Alabama Habitual Felony Offender Act, to a term of thirty (30) years in the State penitentiary. The Petitioner was sentenced for the offense of Unlawful Possession of Marijuana; first degree, (Count Two, CC-01-036), under the provisions of the Alabama Habitual Felony Offender Act, to a term of thirty (30) years in the State penitentiary. The Petitioner was also sentenced for the offense of Distribution of Controlled Substances, to a term of thirty (30) years in the State penitentiary, also pursuant to the Alabama Habitual Felony Offender Act. All three sentences were ordered to run concurrently.

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Written Notice of Appeal was timely filed on July 11, 2001. The Record on Appeal was completed and certified and filed in the Court on July 11, 2001.

Petitioner Heath motioned the Court for appointment of appellate counsel and the Hon. Charles E. Floyd III was appointed to represent the Petitioner on direct appeal.

On January 4, 2002, Attorney Floyd filed a "no merit" brief pursuant to Anders v. California, and Motion for Leave to Withdraw as Counsel.

No pro se appeal was perfected.

ON January 29, 2002, the Alabama Court of Criminal Appeals entered a judgment of dismissal on said appeal.

Petitioner Roy David Heath asserts that the errors committed in his case were of United States Constitutional magnitude and clearly violated his rights by the actions of the trial court and the lawyer(s) who represented him.

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GROUND ONE

WHETHER PETITIONER'S GUILTY PLEA WAS VOLUNTARILY AND KNOWINGLY ENTERED WHERE PETITIONER WAS SENTENCED CONTRARY TO HIS UNDERSTANDING OF A PRIOR NEGOTIATED PLEA AGREEMENT.

ARGUMENT

On April 9, 2001, the Petitioner requested a change of his prior plea(s) of "not guilty" to the offense(s) of distribution of marijuana, distribution of marijuana, and possession of marijuana in the first degree in open court with his attorney, John Britton (now deceased), present. Judge George Greene and the Petitioner discussed the minimum and maximum penalties for his crime(s) and the Petitioner acknowledged that he understood the range of punishment for those crimes.

Prior to Petitioner's withdrawing his plea of "not guilty" to the aforementioned charges, Attorney John Britton had informed the Petitioner that a plea agreement had been discussed with the district attorney's office. Attorney Britton informed Petitioner Heath that if he withdrew his "not guilty" pleas and entered pleas of "guilt" to all pending charges, the State was willing to negotiate a deal where Petitioner would receive a prison term of twenty (20) years with two (2) five year enhancements to run concurrently with the twenty-year sentence. It was explained to the Petitioner that the total aggregate sentence would be twenty years. It was with this understanding that Petitioner Heath decided to withdraw his prior plea(s) of "not guilty" and enter into a plea agreement with the State.

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Petitioner Heath had entered his plea(s) of not guilty based on the fact that he had maintained his innocence to the pending charges and was fully prepared to go to trial. Petitioner contends that the evidence in this case would show that he was in fact not guilty of distributing a controlled substance. Therefore, the sole basis for the Petitioner to withdraw his prior not guilty plea(s) was the inducement of the terms of the plea agreement. The Petitioner was informed that upon his plea of guilt to all pending charges, he would receive a prison term of twenty years with the enhancements running concurrently with the twenty years. The enhancements in this case were pursuant to §13A-12-250 and §13A-12-270 of the Code of Alabama 1975. It should be noted that Count Two of the charge in Case No. CC-01-036 is Unlawful Possession of Marijuana; first degree. This is a Class "C" felony and the law in Alabama does not provide for any enhancements for possession pursuant to §13A-12-250 and §13A-12-270. Yet Petitioner Heath was sentenced to a term of thirty years in this case where the plea agreement clearly stipulated that all three sentences were to be for twenty (20) years.

Petitioner contends that his plea of guilt in this matter was not voluntarily and knowingly entered as the sentences that were imposed upon him are contrary to his understanding of the terms of the plea agreement. Attorney Britton promised Petitioner Heath that his sentence(s) would not exceed a maximum of twenty years. This was to include the enhancements for the school zone and housing project provisions of §13A-12-250 and §13A-12-270. It has long been held under Alabama law

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that in order for a guilty plea to be valid, it must be both voluntarily and knowingly made. See Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369, 88 L.Ed.2d 203 (1985); and Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969). It is equally clear that "[a] guilty plea is not voluntary if induced by misrepresentation... Brady v. United States, 397 U.S. 742, 755, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1969).

The dispositive question in this case is not whether a misrepresentation was actually made, but whether Petitioner Heath's plea of guilt was in fact induced by information or misinformation relayed to him. "[A] plea may be involuntary when an attorney 'materially misinforms the defendant of the consequences of the plea'". See United States v. Rhodes, 913 F.2d 839, 843 (10thCir.1990). Petitioner Heath was fully prepared to take his case to trial. He withdrew his prior plea(s) of "not guilty" only after Attorney Britton assured him that his sentence would be only twenty (20) years. At the sentencing hearing on May 31, 2001, Heath was still under the impression that he was being sentenced to a prison term of twenty (20) years with the two enhancements running concurrent with that twenty year term. At the sentencing hearing on May 31, 2001, Petitioner Heath was under tremendous stress caused by the critical illness of his mother who was on life support at the time. Petitioner Heath had requested a continuance and was denied by the trial judge. It is questionable whether Heath was able to comprehend that at sentencing, the judge had deviated from the agreement that Petitioner had previously agreed to when he withdrew his not guilty plea(s) and entered plea (s) of guilt. The sentencing transcript shows that when the court denied Petitioner's request for a continuance, the judge

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also denied the Petitioner's request to withdraw his plea of guilt. Judge Greene informed Heath that a motion would have to be made. Attorney Britton made no motion.

Petitioner Heath's plea of guilt was not knowingly and voluntarily entered as he was sentenced contrary to his understanding of the prison term(s) he would receive under a plea agreement between Attorney Britton and the State. Had Petitioner Heath been aware of the amount of time he would have to serve in prison, he would have chosen to take his case to trial. Therefore, accurate information would have affected his decision to enter his plea of guilt. Thus, an evidentiary hearing would be required in this matter. See Pitts v. United States, 763 F.2d 197, 201 (6thCir.1985).

GROUND TWO

WHETHER PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY THE STATE'S FAILURE TO NOTIFY THE PETITIONER THAT THE STATE INTENDED TO SEEK ENHANCEMENT OF PETITIONER'S SENTENCE FOR DISTRIBUTION OF A CONTROLLED SUBSTANCE BASED ON THE FACT THAT THE SALE ALLEGEDLY OCCURRED WITHIN A THREE-MILE RADIUS OF A SCHOOL AND WITHIN THREE_MILE RADIUS OF A HOUSING PROJECT.

ARGUMENT

Petitioner Roy David Heath contends that his due process rights were violated when his twenty-year prison sentence was enhanced with an additional ten years in prison because the sale allegedly occurred within a three-mile radius of a school and within a three-mile radius of a housing project pursuant to §13A-12-250 and §13A-12-270 respectively.

Petitioner contends that he was denied due process of law because the state failed to notify him of its intent to invoke the enhancement provisions of §13A-12-250 and §13A-12-270 of the Code of Alabama 1975.

On May 31, 2001, Petitioner Roy David Heath was sentenced in Case No. CC-01-030 to a term of thirty years in the state penitentiary for the unlawful distribution of controlled substances. This thirty-year term was to include an additional five (5) years mandated by §13A-12-250 for the sale near a school campus, and an additional five (5) years mandated by §13A-12-270 for the sale of a controlled substance at or near a public housing project. Petitioner Heath was also sentenced to a prison term pf thirty (30) years in Case No. CC-01-036 for the unlawful sale of a controlled substance. (CountOne). This thirty-year term was to include an additional five years mandated by §13A-12-250

for a sale near a school campus, and an additional five years mandated by §13A-12-270 for the sale of a controlled substance at or near a public housing project.

Petitioner Heath entered his plea of guilt with the belief and understanding that he was to receive only a twenty-year prison term and that said twenty years would be for all three cases. Petitioner was unaware of any enhancement provisions pertaining to the two charges of distribution of controlled substances. The Petitioner never received notice from the State that it intended to enhance his sentence under the provisions of §13A-12-250 and §13A-12-270. Petitioner Heath never agreed to stipulate to these enhancements and was unaware that any stipulation had been entered as part of the plea agreement. The State never offered any proof at sentencing which would show that the sale did in fact occur near a school or housing project. The record is totally devoid of any notice of intent by the State to enhance the Petitioner's sentence(s) under §13A-12-250 or §13A-12-270. Thus it is clear that Petitioner Heath was not given notice prior to either his plea of guilt in this case or at sentencing that either statute would be used to enhance his sentence.

The Alabama Court of Criminal Appeals has held that prior notice by the state is required before the enhancement provisions of 13A-12-250 may be applied. In Cunny v. State, 629 So.2d 693, 696 (Ala.Cr.App.1993), the Court of Appeals held:

"The application of 13A-12-250, like the application of the HFOA, is mandatory. Green v. State, 586 So.2d 54 (Ala.Cr. App.1991). As is the case with the HFOA,

before the schoolyard statute may be invoked the state must give the defendant prior notice of its intention to proceed under that statute. **Wright v. State**, 560 So.2d 1128 (Ala.Cr.App. 1989). Oral notice is sufficient. Id. See also **Grider v. State**, 600 So.2d 401 (Ala.Cr.App.), cert. denied, **Ex parte Brooks**, 600 So.2d 404 (Ala.1992)."

The Alabama Court of Criminal Appeals also impliedly held that prior notice is necessary before §13A-12-270 may be invoked. See Id.

It is well settled that prior notification of the State's intent to enhance a defendant's sentence under the provisions of §13A-12-250 and §13A-12-270 is to occur before sentencing the defendant. Petitioner had no opportunity to defend against the application of these two enhancement statutes. See **Gandy v. State**, 610 So.2d 1242 (Ala.Cr.App.1992). See also **Stevens v. State**, 659 So.2d 990 (Ala.Cr.App.1994), and also **Cunny v. State**, 629 So.2d 693 (Ala.Cr.App.1993).

Therefore, Petitioner would show that the record is silent as to any prior notice by the state to enhance his sentence under §13A-12-250 or §13A-12-270 and as such he was denied due process of law. The prosecution offered no proof at sentencing of the relative distance of the Petitioner and the Petitioner was not given notice of the court's intent to invoke the statute(s). Thus this matter warrants an evidentiary hearing or a new sentencing hearing.

000025

COURT OF CRIMINAL
STATE OF ALABAMA
JUDICIAL BUILDING
P.O. BOX 1000
MONTGOMERY, AL 36102

November

H. W. "Bucky" McMILLAN
Presiding Judge
SUE BELL COBB
PAMELA W. BASCHAB
GREG SHAW
A. KELLI WISE
Judges

RE: CR-01-2444

Roy David Heath v. State of Alabama (Appeal from
CC01-36.60).

You are hereby notified that the record was filed on
November 6th, 2002. Based on the certificate of
appeal, the appellant's brief is due to be filed by
appellee by December 4th, 2002. Should the appellant
his/her brief, the request must be made in accordance with the
informational notice provided to the appellant.

SPECIAL PROVISION FOR "PRO SE INMATES" TO SERVE
immediately, the Attorney General has agreed to
documents filed by "pro se inmates" via the
the Court of Criminal Appeals Clerk's Office
use this alternative method to serve the Attorney
documents filed in proceedings before the Court of
the Attorney General's copy to the Court of
four copies. To take advantage of this alternative
(or other document) that is intended for the
the top "ATTORNEY GENERAL'S COPY," and the
filed with this Court should state that the
Court of Criminal Appeals for service on the
document is required or permitted, the Attorney
the date the pro se document is received by
alternative mode of service on the Attorney
are not represented by counsel and applies
Appeals. Additionally, because the Attorney
appeals from municipal convictions, this is a
appealing a conviction for violating a municipal

IMPORTANT NOTE: Any brief or document that
service will be deemed to have been conditioned on the
certificate of service, please refer to the
the informational notice that was mailed to the
inmates are hereby placed on notice that
of your filings for service on the opposite
returned to you for copying.

LWM/sm

cc: Roy David Heath, Pro Se, Appellant
Office of Attorney General

11-2444

GROUND THREE

WHETHER PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE TWO-PRONG TEST SET OUT IN STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) AT PLEADING AND SENTENCING PHASE OF CRIMINAL PROCEEDINGS, WHICH PREJUDICED THE PETITIONER TO A CONSTITUTIONALLY SIGNIFICANT DEGREE.

ARGUMENT

On April 9, 2001, Petitioner Roy David Heath and his retained attorney, John M. Britton, Esq., appeared before the Circuit Court of Russell County to withdraw his prior plea(s) of not guilty on all counts and entered a plea of guilt to the offenses of Distribution of Controlled Substances in Case No. CC-01-030 and Distribution of Controlled Substances (Count 1), and Unlawful Possession of Marijuana; first degree (Count 2) in Case No. CC-01-036. The Court allowed Petitioner Heath to withdraw his prior plea(s) of guilt on all counts and a sentencing hearing was scheduled for May 31, 2001.

Petitioner Heath was sentenced on May 31, 2001 in Case No. CC-01-030 to thirty years in the state penitentiary for the Distribution of Controlled Substances. This thirty year sentence was to include a five year enhancement pursuant to §13A-12-250 (sale within three miles of a school campus), and another five year enhancement pursuant to §13A-12-270 (sale within three miles of a public housing project). Petitioner Haeth was also sentenced to a thirty year prison term in Case No. CC-01-036 for the Distribution of Controlled Substances (Count One). This thirty year sentence includes a five year enhancement pursuant to §13A-12-250 (sale within three miles of a school) and

an additional five years pursuant to §13A-12-270 (sale within three miles of a public housing project). Petitioner Heath was given a third thirty-year sentence for the Unlawful Possession of Marijuana; first degree (Count Two) in Case No. CC-01-036. No enhancement(s) were applied in the possession case.

Petitioner Roy David Heath was fully prepared to take his case before a jury of his peers. Petitioner believed that the distribution charges pending against him were in error and that he could be vindicated at trial. Attorney John M. Britton was retained by Petitioner Heath. Attorney Britton came to the Petitioner and advised him that he had spoke with the district attorney's office and that a possible plea agreement had been reached. Attorney Britton told Heath that upon his withdrawal of his not guilty pleas and subsequent plea of guilt to all pending charges that the State would sentence him to a prison term of twenty years. No discussion about enhancements took place between the Petitioner and Attorney Britton. Based on the information and understanding of the terms of the plea ageement supplied by Attorney Britton, Petitioner withdrew his prior not.guilty pleas and entered pleas of guilt to all pending cases with the belief that he was going to receive a twenty year prison term on all three cases and that the sentence(s) would run concurrently with one another. Petitioner did not agree to any form of stipulation to any enhancements, either under the HFOA or the drug enhancements of §13A-12-250 or §13A-12-270. Attorney Britton advised his client that if any enhancement(s) were to apply, they would run concurrently with the twenty-year sentence. This was the understanding and basis for Petitioner to enter his plea(s) of

guilty in this case. Throughout the sentencing process, Attorney Britton did not make one objection. Mr. Britton failed to object to the sentence of the Petitioner and the lack of notice by the State as to its intent to proceed with the enhancements mandated by §13A-12-250 and §13A-12-270. Attorney Britton failed to object to the thirty-year sentence imposed upon the Petitioner where there were no enhancement(s) applied.

The Petitioner has the right to enjoy a reasonably effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 90 S.Ct. n. 12, 25 L.Ed.2d 763 (1970); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) wherein the Court stated:

"Counsel owes a duty to the defendant to conduct an independent investigation of the facts, circumstances, pleadings and laws involved. Rummel v. Estelle, 590 F.2d 103, 104 (5th Cir. 1979), and a particular duty to consult with the defendant on all important decisions, and to keep the defendant informed of all important decisions or developments in the course of the prosecution." Id. 104 S.Ct. at 2056, 80 L.Ed.2d at 689.

The Strickland Court set out a two (2) prong test for establishing ineffective assistance of counsel:

- (1) Counsel's performance was deficient; and
- (2) The deficient performance prejudiced the defense.

Id. 466 U.S. at 687, 104 S.Ct. at 2064.

The following facts and actions or omissions of duty by trial attorney John M. Britton, Esq., but not limited to these alone, show a prima facie case of ineffective assistance of counsel, which prejudiced the Petitioner in all critical stages of the criminal proceedings in

000029

STATE OF ALABAMA) IN THE CIRCUIT COURT OF
PLAINTIFF,)
VS.) CASE NO.: CC 01-30.60
) 01-36.60
ROY DAVID HEATH)
ICE 9:48 AM DEFENDANT.)

ORDER

The Petitioner, Roy David Heath, has filed a petition for relief from convictions and sentences pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. Petitioner cites three grounds for relief in his petition.

1. Plea of Guilty not voluntary and knowing.
2. Failure of the State of Alabama to notify Defendant of enhancement provisions of sections 13A-12-250 and 13A-12-270 of the Code of Alabama, 1975 as amended.
3. Ineffective assistance of trial counsel.

Upon consideration of the pleadings and the Court records, this Court finds that the Petitions for relief are due to be dismissed.

Petitioner, Roy David Heath claims that the pleas of guilty that he entered were not voluntarily and knowing. Upon entry of his plea of guilty, the Defendant stated to the court that he entered into these pleas of guilty voluntarily and that he understood the Ireland form which he signed and which was submitted to the court. Petitioner also signed the plea bargain agreement, which he signed and submitted to the court. He also stated that he was satisfied with the legal representation he had received from the Hon. John Britton. A copy of the plea bargain agreement is made part of this order.

Petitioner waived any further right to notification of enhancement of sentence when he entered into the plea bargain

agreement and entered pleas of guilty. Petitioner stipulated he had three prior felony convictions and the State of Alabama would not have to make further proof of these convictions at sentencing. Neither of his two sentences exceeded the maximum as allowed by law under Alabama's Habitual Offender Act.

Petitioner was represented on appeal of the conviction's and sentences by the Hon. Charles E. Floyd, III. The issue of ineffective assistance of trial counsel was not raised in a Motion for New Trial or on appeal. This claim is barred.

It is therefore ORDERED, ADJUDGED AND DECREED that the Petitions for relief are hereby dismissed.

DONE this the 16th day of July 2002.



JUDGE, CIRCUIT COURT

In The Alabama Court Of Criminal Appeals

Roy David Heath,
Appellant,

CASE No. CC-01-030, CG-01-036

vs.
State Of Alabama,
Appellee,

(On Appeal From The Circuit Court
Of Russell County, Alabama)

Motion For Stay

Appellant Roy David Heath, respectfully makes this Honorable Court, pursuant to *Barnes v. State*, 681 So.2d 324 (Ala. Crim. App. 1992), to stay the above referenced appeal pending petition of Relief From Conviction and Sentence under AL.R.Crim.P. 32. As reasons for this motion, the Appellant would show the Court as follows;

(1) Appellant has other issues that he would incorporate before this Honorable Court in a Rule 32 petition;

(2) That these issues would show that the petitioner never read guilty to the charges before this Honorable Court;

(3) That after the ruling on this second Rule 32 petition has been rendered, then these issues can be combined into one brief;

Wherefore premises considered, petitioner prays that the Honorable Court grant this said petition, that petitioner may be insured that justice has been fairly administered;

Done this 23rd day of August 2002;

Respectfully Submitted,
Roy David Heath

FILED IN OFFICE
2002 SEP -5 AM 9:37
CIRCUIT COURT
RUSSELL CO., ALA.

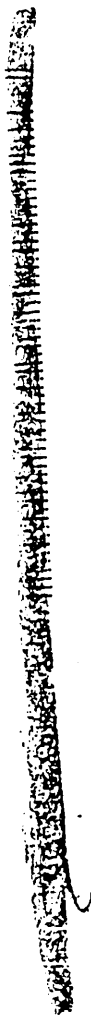
000032

Mr. Roy David Henthth-217344-4-cell
F. N. HAIN 3800
ATLANTA, ALABAMA-36503



THIS CORRESPONDENCE IS BEING FORWARDED TO THE
FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE,
WASHINGTON, D.C. 20535, FOR YOUR INFORMATION.
IT IS REQUESTED THAT YOU ADVISE THE BUREAU OF ANY
FURTHER DEVELOPMENTS IN THIS MATTER.

Check Of:
IN The Circuit Court Of Russell County
P.O. Box 518
Phenix City, ALABAMA-36868-0518



000033

In The Court Of Criminal Appeals
State Of Alabama

FILED IN OFFICE
2007 SEP -5 PM 12:47
CRIMINAL COURT
MOBILE, AL

Roy David Heath

Appellant

Vs.

State Of Alabama,

Appellee

Case No. CC-01-030, CC-01-036

Notice Of Appeal:

The appellant in the above styled action hereby gives notice of appeal to the Court of Criminal Appeals from the decision rendered in this action on _____ whereas the Trial Judge dismissed appellant's petition.

Dated this 23rd day of AUGUST 2002;

Roy David Heath

Certificate Of Service:

I hereby certify that I have served all parties with a true and correct copy of the foregoing by the same being placed in the U.S. mail all postage paid.

Dated this 23rd day of AUGUST 2002;

Roy David Heath

000034

State of Alabama Unified Judicial System Form ARAP- 26 (front) 8/91	COURT OF CRIMINAL APPEALS DOCKETING STATEMENT	Criminal Appeal Number _____
---	--	---------------------------------

A. GENERAL INFORMATION:

☒ CIRCUIT COURT
 ☐ DISTRICT COURT
 ☐ JUVENILE COURT OF _____ COUNTY

RUSSELL

ROY DAVID HEATH , Appellant

V. ☒ STATE OF ALABAMA
 ☐ MUNICIPALITY OF STATE OF ALABAMA

Case Number <u>CC-01-030, CC-01-036</u>	Date of Complaint or Indictment <u>N/A</u>	Date of Judgment/Sentence/Order <u>N/A</u>
Number of Days of Trial/Hearing <u>N/A</u> Days	Date of Notice of Appeal Oral: _____	Written: <u>AUGUST 23, 2002</u>
Indigent Status Requested: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

B. REPRESENTATION:

Is Attorney Appointed or Retained? ☒ Appointed ☐ Retained.
 If no attorney, will appellant represent self? ☐ Yes ☐ No

Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary) <u>ROY DAVID HEATH PRO SE</u>		Telephone Number _____
Address <u>FOUNTAIN 3800</u>	City <u>ATMORE, ALABAMA</u>	State <u>ALABAMA</u> Zip Code <u>36503</u>

C. CODEFENDANTS: List each CODEFENDANT and the codefendant's case number.

Codefendant <u>N/A</u>	Case Number <u>N/A</u>
Codefendant	Case Number
Codefendant	Case Number

D. TYPE OF APPEAL: Please check the applicable block.

1 <input checked="" type="checkbox"/> State Conviction	4 <input type="checkbox"/> Pretrial Order	7 <input type="checkbox"/> Juvenile Transfer Order	10 <input type="checkbox"/> Other (Specify) _____
2 <input checked="" type="checkbox"/> Post-Conviction Remedy	5 <input type="checkbox"/> Contempt Adjudication	8 <input type="checkbox"/> Juvenile Delinquency	
3 <input type="checkbox"/> Probation Revocation	6 <input type="checkbox"/> Municipal Conviction	9 <input type="checkbox"/> Habeas Corpus Petition	

E. UNDERLYING CONVICTION/CHARGE: Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

1 <input type="checkbox"/> Capital Offense - § _____	6 <input type="checkbox"/> Trafficking in Drugs - § _____	11 <input type="checkbox"/> Fraudulent Practices - § _____
2 <input type="checkbox"/> Homicide - § _____	7 <input type="checkbox"/> Theft - § _____	12 <input type="checkbox"/> Offense Against Family - § _____
3 <input type="checkbox"/> Assault - § _____	8 <input type="checkbox"/> Damage or Intrusion to Property - § _____	13 <input type="checkbox"/> Traffic - DUI - § _____
4 <input type="checkbox"/> Kidnapping/Unlawful Imprisonment - § _____	9 <input type="checkbox"/> Escape - § _____	14 <input type="checkbox"/> Traffic - Other - § _____
5 <input type="checkbox"/> Drug Possession - § _____	10 <input type="checkbox"/> Weapons/Firearms - § _____	15 <input type="checkbox"/> Miscellaneous (Specify): _____

F. DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

G. TRANSCRIPT:

1. Will the record on appeal have a reporter's transcript? ☐ Yes ☐ No

2. If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. AUGUST 23, 2002

3. If the answer to question "1" is "No":

(a) Will a stipulation of facts be filed with the circuit clerk? ☐ Yes ☐ No

(b) Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? ☐ Yes ☐ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b).

Form ARAP- 26 (back) 8/91

COURT OF CRIMINAL APPEALS DOCKETING STATEMENT

H. POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rules 20.3 and 24.4 (ARCrP)):

DATE OF FILING			TYPE C. POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year
5	21	2002	RULE 32 Petition			

I. NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

- (1) Whether Petitioner's Guilty Plea Was Voluntarily And Knowingly Entered Where Petitioner Was Sentenced Contrary To His Understanding Of A Prior Negotiated Plea Agreement:
- (2) Whether Petitioner's Due Process Rights Were Violated By The State's Failure To Notify The Petitioner That The State Intended To Seek Enhancement Of Petitioner's Sentence For Distribution Of A Controlled Substance Based On The Fact That The Sale Allegedly Occurred Within A Three-Mile Radius Of A School And Three Miles Within Housing Project:
- (3) Ineffective Assistance Of Trial And Appellant Counsel;

J. ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

- (1) Whether Petitioner's Guilty Plea Was Voluntarily And Knowingly Entered Where Petitioner Was Sentenced Contrary To His Understanding Of A Prior Negotiated Plea Agreement:
- (2) Whether Petitioner's Due Process Rights Were Violated By The State's Failure To Notify Petitioner That The State Intended To Seek Enhancement Of Petitioner's Sentence For Distribution Of A Controlled Substance Based On The Fact That The Sale Allegedly Occurred Within A Three Mile Radius Of A School And Within A Three-Mile Housing Project:
- (3) Ineffective Assistance Of Trial And Appellant Counsel;

K. SIGNATURE:

Ray David Heath

000036

State of Alabama Unified Judicial System Form ARAP-1C 3/97	REPORTER'S TRANSCRIPT ORDER - CRIMINAL <small>See Rules 10(c) and 11(b) of the Alabama Rules of Appellate Procedure (A.R.A.P.).</small>	Criminal Appeal Number _____
---	---	---------------------------------

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☒ COUNTY COURT
 ☐ DISTRICT COURT
 ☐ JUVENILE COURT OF RUSSELL COUNTY
ROY DAVID HEATH, Appellant
 v. ☒ STATE OF ALABAMA
 ☐ MUNICIPALITY OF State of Alabama

Case Number <u>CC-01-030, CC-01-036</u>	Date of Judgment/Sentence/Order _____
Date of Notice of Appeal _____	
Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Court: _____
 Written: AUGUST 23, 2002

PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE/DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 10(A)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, CODE OF ALABAMA 1975).

ROY DAVID HEATH

AUGUST 23, 2002

ROY DAVID HEATH

PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED. Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A.R.A.P.)):

MARK PROCEEDINGS REQUESTED:

- A. ☐ **TRIAL PROCEEDINGS** - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.
- B. ☐ **ORGANIZATION OF THE JURY** - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs. (See Rule 19.4, A.R.A.P.)
- C. ☐ **ARGUMENTS OF COUNSEL** - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs. (See Rule 19.4, A.R.A.P.)

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL (ATTACH ADDITIONAL PAGES IF NECESSARY):

ADDITIONAL PROCEEDINGS REQUESTED	DATE	COURT REPORTER(S)
D. _____	_____	_____
E. _____	_____	_____
F. _____	_____	_____
G. _____	_____	_____

IMPORTANT NOTICE: The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to any proceeding the case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" not sufficient. (See Rule 10(c)(2), A.R.A.P.)

PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT THAT STATUS HAS NOT BEEN REVOKED; OR (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

ROY DAVID HEATH

AUGUST 23, 2002

ROY DAVID HEATH

DISTRIBUTION: Criminal filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals, (2) the District Attorney

CC00037

NOTICE OF APPEAL TO THE ALABAMA COURT OF APPEALS
IN THE CIRCUIT COURT OF BIRMINGHAM
STATE OF ALABAMA VS HEATH ROY GADSDEN
JUDGE: GE
GE AL GREENE

APPEAL DATE: 08/23/2002

EMERGENCY STATUS:

GRANTED EMERGENCY STATUS AT TRIAL COURT: ☒ YES ☐ NO
 APPEALING COUNSEL PERMITTED TO W/D ON APPEAL: ☐ YES ☒ NO
 EMERGENCY STATUS REVOKED ON APPEAL: ☐ YES ☒ NO
 EMERGENCY STATUS GRANTED ON APPEAL: ☐ YES ☒ NO

DEATH PENALTY: NO

APPEAL TYPE: RULE 32 PETITION

THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E.
 WRIT OF HABEAS CORPUS, ETC) OR FROM ANY OTHER ISSUED

RULE 32 PETITION,
 THE TRIAL JUDGE.

CO/CASE NUMBER: 87/CC 2001 000030.60

ORDER ENTERED(DATE): 07172002 PETITION: X DISMISSED

DENIED GRANTED

POST-JUDGMENT MOTIONS FILED: DT FILED DT DENI
 --- MOTION FOR NEW TRIAL ---
 --- MOTION FOR JUDGE OF ACQUIT ---
 --- MOTION TO W/D GUILTY PLEA ---
 --- MOTION FOR ATTY TO W/DRAW ---
 --- OTHER ---

CON BY AGREE

COURT REPORTER(S):

ADDRESS:

APPELLATE COUNSEL #1:

ADDRESS:

PRO SE

PHONE NUMBER:

000-000-0000

00000

APPELLATE COUNSEL #2:

ADDRESS:

PHONE NUMBER:

APPELLANT (PRO SE):

ADDRESS:

HEATH ROY GA
 217B4E
 ATMORE

D

AL 365033800

AIS #:

APPELLEE (IF CITY APPEAL):

ADDRESS:

I CERTIFY THAT THE INFORMATION PROVIDED
 ABOVE IS ACCURATE TO THE BEST OF MY
 KNOWLEDGE AND I HAVE SIGNED A COPY OF
 THIS NOTICE OF APPEAL ON ALL PARTIES TO
 THIS ACTION ON THIS 6th DAY OF Sept. 02

OPERATOR: SHG
 EPAPED: 09/06/2002

CIR TO COURT CLERK

```
ACRO370          ALABAMA JUDICIAL INFORMATION SYSTEM      CASE: CC 2001 000036.60
OPER: SHG                CASE ACTION SUMMARY
PAGE: 1                CIRCUIT    CRIMINAL                RUN DATE: 11/06/2002
=====
IN THE CIRCUIT COURT OF  RUSSELL                          JUDGE: GRC
```

STATE OF ALABAMA VS HEATH ROY DAVID
217344
CASE: CC 2001 000036.60 FOUNTAIN 3800
ATMORE, AL 36503 3800

DOB: 12/23/1960 SEX: M RACE: W HT: 5 06 WT: 195 HR: BRO EYES: BRO
SSN: 259271658 ALIAS NAMES:

CHARGE01: RULE 32-FELONY CODE01: RULE LIT: RULE 32-FELONY TYP: F #: 001
OFFENSE DATE: AGENCY/OFFICER: SL00033

DATE WAR/CAP ISS:		DATE ARRESTED:	
DATE INDICTED:	01/12/2001	DATE FILED:	06/06/2002
DATE RELEASED:		DATE HEARING:	
BOND AMOUNT:	\$.00	SURETIES:	

```
DATE 1:          DESC:          TIME: 0000
DATE 2:          DESC:          TIME: 0000
```

[illegible]

00000 00000

PROSECUTOR:

OTH CSE: 000000000000 CHK/TICKET NO: GRAND JURY: 173
COURT REPORTER: _____ SID NO: 000000000
DEF STATUS: PRISON DEMAND: OPER: SHG

TRANS DATE	ACTIONS, JUDGEMENTS, AND NOTES	OPE
06/06/2002	IN FORMA PAUPERIS DECLARATION	JOS
06/06/2002	MOTION TO PROCEED IN FORMA PAUPERIS	JOS
06/06/2002	PETITION FOR RELIEF FROM CONVICTION OR SENTENCE	JOS
07/17/2002	ORDER OF DISMISSAL	JOS
07/17/2002	CASE ACTION SUMMARY PRINTED (AR08)	JOS
09/05/2002	DOCKETING STATEMENT	JOS
09/05/2002	REPORTER'S TRANSCRIPT ORDER	JOS
09/05/2002	CASE APPEALED ON: 08/23/2002 (AR10)	SHG
09/05/2002	APPEAL "TO" TYPE: "R" (AR10)	SHG
09/05/2002	NOTICE OF APPEAL	JOS
09/05/2002	COPY OF MOTION TO STAY FILED IN THE COURT OF	JOS
09/05/2002	CRIMINAL APPEALS	JOS
09/18/2002	CLERKS REQUEST FROM EXTENSION TO FILE RECORD ON	SHG
09/18/2002	APPEAL	SHG
09/26/2002	ORDER FOR EXTENSION TO OCTOBER 11, 02	SHG
10/15/2002	CLERK'S REQUEST FOR 28 DAY EXTENSION	SHG
10/18/2002	ORDER OF EXTENSION TO NOVEMBER 1, 02	SHG

[illegible]

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Case Number 2
 CC- 01 - 90, 36
 ID YR NUMBER
 (To be completed
 by Court Clerk)

IN FORMA PAUPERIS DECLARATION

IN THE CIRCUIT COURT OF RUSSELL COUNTY

[Insert appropriate court]

ROY DAVID HEATH AIS #217344

(Petitioner)

vs.

STATE OF ALABAMA

(Respondent(s))

DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, ROY DAVID HEATH, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes _____ No X

a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

N/A

b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

March 15, 2001

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession, or other form of self-employment?

Yes _____ No X

b. Rent payments, interest, or dividends?

Yes _____ No X

c. Pensions, annuities, or life insurance payments?

Yes _____ No X

d. Gifts or inheritances?

Yes _____ No X

e. Any other sources?

Yes _____ No X

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If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

N/A

3. Do you own cash, or do you have money in a checking or savings account?

Yes _____ No X

(Include any funds in prison accounts.)

If the answer is "yes", state the total value of the items owned.

N/A

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes _____ No X

If the answer is "yes", describe the property and state its approximate value.

N/A

5. List the persons who are dependent upon you for support; state your relationship to those persons; and indicate how much you contribute toward their support.

Wife

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on

5/19/02
(Date)

Signature of Petitioner

Roy David Heath, 217344

CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ 02/60 on account to his credit at the institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said Fountain Corr. Center institution:

See attached monthly averages printout.

5-21-02

DATE

Sylvia D. Hansen

AUTHORIZED OFFICER OF INSTITUTION

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AIS #: 217344

NAME: HEATH, ROY DAVID

THESE FIGURES ARE AS OF: 05/20/2002

MONTH	# OF DAYS	AVG DAILY BALANCE	MONTHLY DEPOSITS
NOV	10	\$0.56	\$0.00
DEC	31	\$5.84	\$40.00
JAN	31	\$9.36	\$115.00
FEB	28	\$10.86	\$110.00
MAR	31	\$6.59	\$60.00
APR	30	\$7.04	\$80.00
MAY	20	\$4.18	\$60.00
Average 6 Months Balance		\$7.41	\$77.50

Sylvia D. Harrelson
Sylvia D. Harrelson, PMOD Clerk

STATE OF ALABAMA, ESCAMBIA COUNTY, SWORN TO AND SUBSCRIBED BEFORE ME THIS
20th DAY OF MAY, 2002.

J. Patrick McKay, Notary Public

MY COMMISSION EXPIRES OCT. 25, 2004

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IN THE CIRCUIT COURT OF RUSSELL COUNTY
FOR THE TWENTY-SIXTH JUDICIAL DISTRICT
PHENIX CITY, ALABAMA

ROY DAVID HEATH,

Petitioner,

vs.

STATE OF ALABAMA,

Respondent.

Case No. CC-01-030.60

CC-01-035.60

MOTION TO PROCEED IN FORMA PAUPERIS

COMES NOW THE Petitioner, Roy David Heath, by and through himself, in the above-styled cause, wherein a judgment of conviction and sentence for the crime(s) of Distribution of Controlled Substances (x2) and the Unlawful Possession of Marijuana; first degree were entered against him on May 31, 2001, and informs this Honorable Court that he desires to seek relief from his conviction and sentence before this Court.

The Petitioner is incarcerated and serving a thirty (30) year prison term and thus is wholly without funds to pay the filing fee(s) for such an action or such other costs and expenses which may be necessarily incurred in the adjudication of his Rule 32 Petition, as is more fully shown by the attached Declaration of In Forma Pauperis.

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WHEREFORE, PREMISES CONSIDERED, Petitioner prays that an Order be entered herein finding him to be an indigent person, authorizing him to proceed with his Rule 32 Petition seeking relief from the conviction and sentence of this Court, in forma pauperis, and authorizing the waiving of all filing fees and costs pertaining to this action.

Respectfully submitted this the 31 day of MAY, 2002.

X Roy Heath

Roy David Heath, Petitioner pro se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion was mailed to the District Attorney of Russell County, by placing the same in a pre-paid postage affixed and properly addressed envelope, and depositing the same in the United States Mail on: MAY 31, 2002.

X Roy Heath

Roy David Heath, Petitioner pro se

AIS #217344, Dorm #7

Fountain Correctional Center

Fountain 3800

Atmore, Alabama 36503-3800

SERVICE TO:

Office of the District Attorney
Russell County, Alabama
Russell County Courthouse
501 14th Street
Pherix City, Alabama 36867

C00045

PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

(Pursuant to Rule 32,
Alabama Rules of Criminal Procedure)

Case Number

CC - 01 - 030, 036
ID YR NUMBER

IN THE CIRCUIT COURT OF RUSSELL ALABAMA

ROY DAVID HEATH vs. STATE OF ALABAMA
Petitioner (Full Name) Respondent

[Indicate either the "State" or,
if filed in municipal court, the
name of the "Municipality"]

Prison Number AIS #217344 Place of Confinement Fountain Corr. Center

County of conviction Russell County, Alabama

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY
THE ACCOMPANYING INSTRUCTIONS.

- Name and location (city and county) of court which entered the judgment of conviction or sentence under attack Russell County Circuit Court
Phenix City, Alabama
- Date of judgment of conviction May 31, 2001
- Length of sentence Thirty Years (30) each count
- Nature of offense involved (all counts) Distribution of Marijuana (CC-01-30)
Distribution of a Controlled Substance (CC-01-36) (Count 1)
Possession of Marijuana (CC-01-36) (Count 2)
- What was your plea? (Check one)
 - Guilty x
 - Not guilty _____
 - Not guilty by reason of mental disease or defect _____
 - Not guilty and not guilty by reason of mental disease or defect _____

6. Kind of trial: (Check one)

(a) Jury _____

(b) Judge only _____

7. Did you testify at the trial?

Yes _____

No ☒ _____

8. Did you appeal from the judgment of conviction?

Yes ☒ _____

No _____

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court Circuit Court of Russell County, Alabama

(2) Result Anders brief filed - appeal not perfected

(3) Date of result Appeal dismissed on January 29, 2002

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court N/A

(2) Result N/A

(3) Date of result N/A

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court N/A

(2) Result N/A

(3) Date of result N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes _____

No X

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court N/A(2) Nature of proceeding N/A(3) Grounds raised N/A

(attach additional sheets if necessary) _____

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____

No X(5) Result N/A(6) Date of result N/A

- (b) As to any second petition, application, or motion, give the same information:

(1) Name of court N/A(2) Nature of proceeding N/A(3) Grounds raised N/A

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____

No X(5) Result N/A(6) Date of result N/A

- (c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(1) Name of court N/A

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(2) Nature of proceeding N/A(3) Grounds raised N/A

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____

No X(5) Result N/A(6) Date of result N/A

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes _____

No X

(2) Second petition, etc. Yes _____

No X

(2) Third petition, etc. Yes _____

No X

**ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.**

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

N/A

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

GROUNDS OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

- X A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:

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- (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

X B. The court was without jurisdiction: 1. Under the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

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The facts do not merely amount to impeachment evidence; and

the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

 13. **IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:**

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes No X

B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court N/A

(b) Result N/A

(c) Date of result N/A
(attach additional sheets if necessary)

C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes No X

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15. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

- (a) At preliminary hearing John Britton
P.O. Drawer 1188, Phenix City Alabama 36868-1188
- (b) At arraignment and plea same as "(a)"
- (c) At trial -same as "(a)"
- (d) At sentencing same as "(a)"
- (e) On appeal Charles E. Floyd III
1000 14th Street, P.O. Box 759 Phenix City, Alabama 36868-0759
- (f) In any post-conviction proceeding N/A
- (g) On appeal from adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes X No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No X

- (a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

- (b) And give date and length of sentence to be served in the future:

N/A

- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No X

18. What date is this petition being mailed?

May 31, 2002

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

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PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on 5/31/02
(Date)

Roy David Heath
Signature of Petitioner

Roy David Heath, 217344

SWORN TO AND SUBSCRIBED before me this the 31ST day of May, 2002
Richard D. Heath
Notary Public

OR *

ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I Swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true

and correct. Executed on _____
(Date)

Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 19____.

Notary Public

Name and address of attorney representing petitioner
in this proceeding (if any)

FILED IN OFFICE
2002 JUN -6 PM 1:20
CIRCUIT COURT
JUL 11 10 AM

CC00053

IN THE CIRCUIT COURT OF RUSSELL COUNTY
FOR THE TWENTY-SIXTH JUDICIAL DISTRICT
PHENIX CITY, ALABAMA

ROY DAVID HEATH,)	
Petitioner,)	
)	
)	
vs.)	Case No. <u>CC-01-030</u>
)	<u>CC-01-036</u>
)	
STATE OF ALABAMA,)	
Respondent.)	

PETITION FOR RELIEF FROM CONVICTION AND SENTENCE
PURSUANT TO RULE 32, A.R.CRIM.P.
ATTACHMENT TO THE FORM

Petitioner Roy David Heath brings this post-conviction action pursuant to Rule 32, Alabama Rules of Criminal Procedure, and submits the following for this Honorable Court's consideration:

INTRODUCTION

Petitioner Roy David Heath was arrested on or about May 4, 2000 for the Unlawful Distribution of Controlled Substances in Case No. CC-01-030. Petitioner Roy David Heath was also charged on May 4, 2000 with the Unlawful Distribution of Controlled Substances and Unlawful Possession of Marijuana, first degree in Case No. CC-01-036. The Russell County Grand Jury, (January 2001 Term), indicted the Petitioner on these charges in two (2) separate indictments on January 12, 2001.

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The Hon. John Britton represented the Petitioner on the pending charges of the Unlawful Distribution of Controlled Substances (x2), a violation of Section 13A-12-211, of the Code of Alabama 1975, and the Unlawful Possession of Marijuana; first degree, a violation of Section 13A-12-213, of the Code of Alabama 1975.

The Petitioner, with retained attorney John Britton, appeared at the Arraignment of the Petitioner on February 16, 2001 and the Petitioner waived a reading of the indictment(s) in open Court and entered a plea of not guilty on all counts.

On April 9, 2001, Petitioner Heath and Attorney Britton appeared before the Circuit Court of Russell County to withdraw his plea of not guilty on all counts and entered a plea of guilt to the offense(s) of Distribution of Controlled Substances (x2) and the Unlawful Possession of Marijuana; first degree. The Court allowed Petitioner Heath to withdraw his plea(s) of guilt on all counts and a Sentencing Hearing was scheduled for May 31, 2001.

The Petitioner was sentenced on May 31, 2001 and his punishment was fixed for the offense of Distribution of Controlled Substances (Count One, CC-01-036), under the Alabama Habitual Felony Offender Act, to a term of thirty (30) years in the State penitentiary. The Petitioner was sentenced for the offense of Unlawful Possession of Marijuana; first degree, (Count Two, CC-01-036), under the provisions of the Alabama Habitual Felony Offender Act, to a term of thirty (30) years in the State penitentiary. The Petitioner was also sentenced for the offense of Distribution of Controlled Substances, to a term of thirty (30) years in the State penitentiary, also pursuant to the Alabama Habitual Felony Offender Act. All three sentences were ordered run concurrently.

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Written Notice of Appeal was timely filed on July 11, 2001. The Record on Appeal was completed and certified and filed in the Court on July 11, 2001.

Petitioner Heath motioned the Court for appointment of appellate counsel and the Hon. Charles E. Floyd III was appointed to represent the Petitioner on direct appeal.

On January 4, 2002, Attorney Floyd filed a "no merit" brief pursuant to Anders v. California, and Motion for Leave to Withdraw as Counsel.

No pro se appeal was perfected.

ON January 29, 2002, the Alabama Court of Criminal Appeals entered a judgment of dismissal on said appeal.

Petitioner Roy David Heath asserts that the errors committed in his case were of United States Constitutional magnitude and clearly violated his rights by the actions of the trial court and the lawyer(s) who represented him.

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GROUND ONE

WHETHER PETITIONER'S GUILTY PLEA WAS VOLUNTARILY AND KNOWINGLY ENTERED WHERE PETITIONER WAS SENTENCED CONTRARY TO HIS UNDERSTANDING OF A PRIOR NEGOTIATED PLEA AGREEMENT.

ARGUMENT

On April 9, 2001, the Petitioner requested a change of his prior plea(s) of "not guilty" to the offense(s) of distribution of marijuana, distribution of marijuana, and possession of marijuana in the first degree in open court with his attorney, John Britton (now deceased), present. Judge George Greene and the Petitioner discussed the minimum and maximum penalties for his crime(s) and the Petitioner acknowledged that he understood the range of punishment for those crimes.

Prior to Petitioner's withdrawing his plea of "not guilty" to the aforementioned charges, Attorney John Britton had informed the Petitioner that a plea agreement had been discussed with the district attorney's office. Attorney Britton informed Petitioner Heath that if he withdrew his "not guilty" pleas and entered pleas of "guilt" to all pending charges, the State was willing to negotiate a deal where Petitioner would receive a prison term of twenty (20) years with two (2) five year enhancements to run concurrently with the twenty-year sentence. It was explained to the Petitioner that the total aggregate sentence would be twenty years. It was with this understanding that Petitioner Heath decided to withdraw his prior plea(s) of "not guilty" and enter into a plea agreement with the State.

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Petitioner Heath had entered his plea(s) of not guilty based on the fact that he had maintained his innocence to the pending charges and was fully prepared to go to trial. Petitioner contends that the evidence in this case would show that he was in fact not guilty of distributing a controlled substance. Therefore, the sole basis for the Petitioner to withdraw his prior not guilty plea(s) was the inducement of the terms of the plea agreement. The Petitioner was informed that upon his plea of guilt to all pending charges, he would receive a prison term of twenty years with the enhancements running concurrently with the twenty years. The enhancements in this case were pursuant to §13A-12-250 and §13A-12-270 of the Code of Alabama 1975. It should be noted that Count Two of the charge in Case No. CC-01-036 is Unlawful Possession of Marijuana, first degree. This is a Class "C" felony and the law in Alabama does not provide for any enhancements for possession pursuant to §13A-12-250 and §13A-12-270. Yet Petitioner Heath was sentenced to a term of thirty years in this case where the plea agreement clearly stipulated that all three sentences were to be for twenty (20) years.

Petitioner contends that his plea of guilt in this matter was not voluntarily and knowingly entered as the sentences that were imposed upon him are contrary to his understanding of the terms of the plea agreement. Attorney Britton promised Petitioner Heath that his sentence(s) would not exceed a maximum of twenty years. This was to include the enhancements for the school zone and housing project provisions of §13A-12-250 and §13A-12-270. It has long been held under Alabama law

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that in order for a guilty plea to be valid, it must be both voluntarily and knowingly made. See Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369, 88 L.Ed.2d 203 (1985); and Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969). It is equally clear that "[a] guilty plea is not voluntary if induced by misrepresentation... Bardy v. United States, 397 U.S. 742, 755, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1969).

The dispositive question in this case is not whether a misrepresentation was actually made, but whether Petitioner Heath's plea of guilt was in fact induced by information or misinformation relayed to him. "[A] plea may be involuntary when an attorney 'materially misinforms the defendant of the consequences of the plea'". See United States v. Rhodes, 913 F.2d 839, 843 (10th Cir. 1990). Petitioner Heath was fully prepared to take his case to trial. He withdrew his prior plea(s) of "not guilty" only after Attorney Britton assured him that his sentence would be only twenty (20) years. At the sentencing hearing on May 31, 2001, Heath was still under the impression that he was being sentenced to a prison term of twenty (20) years with the two enhancements running concurrent with that twenty year term. At the sentencing hearing on May 31, 2001, Petitioner Heath was under tremendous stress caused by the critical illness of his mother who was on life support at the time. Petitioner Heath had requested a continuance and was denied by the trial judge. It is questionable whether Heath was able to comprehend that at sentencing, the judge had deviated from the agreement that Petitioner had previously agreed to when he withdrew his not guilty plea(s) and entered plea (s) of guilt. The sentencing transcript shows that when the court denied Petitioner's request for a continuance, the judge

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also denied the Petitioner's request to withdraw his plea of guilt. Judge Greene informed Heath that a motion would have to be made. Attorney Britton made no motion.

Petitioner Heath's plea of guilt was not knowingly and voluntarily entered as he was sentenced contrary to his understanding of the prison term(s) he would receive under a plea agreement between Attorney Britton and the State. Had Petitioner Heath been aware of the amount of time he would have to serve in prison, he would have chosen to take his case to trial. Therefore, accurate information would have affected his decision to enter his plea of guilt. Thus, an evidentiary hearing would be required in this matter. See Pitts v. United States, 763 F.2d 197, 201 (6th Cir. 1985).

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GROUND TWO

WHETHER PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED BY THE STATE'S FAILURE TO NOTIFY THE PETITIONER THAT THE STATE INTENDED TO SEEK ENHANCEMENT OF PETITIONER'S SENTENCE FOR DISTRIBUTION OF A CONTROLLED SUBSTANCE BASED ON THE FACT THAT THE SALE ALLEGEDLY OCCURRED WITHIN A THREE-MILE RADIUS OF A SCHOOL AND WITHIN THREE_MILE RADIUS OF A HOUSING PROJECT.

ARGUMENT

Petitioner Roy David Heath contends that his due process rights were violated when his twenty-year prison sentence was enhanced with an additional ten years in prison because the sale allegedly occurred within a three-mile radius of a school and within a three-mile radius of a housing project pursuant to §13A-12-250 and §13A-12-270 respectively.

Petitioner contends that he was denied due process of law because the state failed to notify him of its intent to invoke the enhancement provisions of §13A-12-250 and §13A-12-270 of the Code of Alabama 1975.

On May 31, 2001, Petitioner Roy David Heath was sentenced in Case No. CC-01-030 to a term of thirty years in the state penitentiary for the unlawful distribution of controlled substances. This thirty-year term was to include an additional five (5) years mandated by §13A-12-250 for the sale near a school campus, and an additional five (5) years mandated by §13A-12-270 for the sale of a controlled substance at or near a public housing project. Petitioner Heath was also sentenced to a prison term of thirty (30) years in Case No. CC-01-036 for the unlawful sale of a controlled substance. (CountOne). This thirty-year term was to include an additional five years mandated by §13A-12-250

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for a sale near a school campus, and an additional five years mandated by §13A-12-270 for the sale of a controlled substance at or near a public housing project.

Petitioner Heath entered his plea of guilt with the belief and understanding that he was to receive only twenty-year prison term and that said twenty years would be for all three cases. Petitioner was unaware of any enhancement provisions pertaining to the two charges of distribution of controlled substances. The Petitioner never received notice from the State that it intended to enhance his sentence under the provisions of §13A-12-250 and §13A-12-270. Petitioner Heath never agreed to stipulate to these enhancements and was unaware that any stipulation had been entered as part of the plea agreement. The State never offered any proof at sentencing which would show that the sale did in fact occur near a school or housing project. The record is totally devoid of any notice of intent by the State to enhance the Petitioner's sentence(s) under §13A-12-250 or §13A-12-270. Thus it is clear that Petitioner Heath was not given notice prior to either his plea of guilt in this case or at sentencing that either statute would be used to enhance his sentence.

The Alabama Court of Criminal Appeals has held that prior notice by the state is required before the enhancement provisions of 13A-12-250 may be applied. In Cann v. State, 629 So.2d 693, 696 (Ala.Cr.App.1993), the Court of Appeals held:

"The application of 13A-12-250, like the application of the HPCA, is mandatory.

Green v. State, 586 So.2d 54 (Ala.Cr. App.1991). As is the case with the HPCA,

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before the schoolyard statute may be invoked the state must give the defendant prior notice of its intention to proceed under that statute. Wright v. State, 560 So.2d 1128 (Ala.Cr.App. 1989). Oral notice is sufficient. Id. See also Grider v. State, 600 So.2d 401 (Ala.Cr.App.), cert. denied, Ex parte Brooks, 600 So.2d 404 (Ala.1992)."

The Alabama Court of Criminal Appeals also impliedly held that prior notice is necessary before §13A-12-270 may be invoked. See Id.

It is well settled that prior notification of the State's intent to enhance a defendant's sentence under the provisions of §13A-12-250 and §13A-12-270 is to occur before sentencing the defendant. Petitioner had no opportunity to defend against the application of these two enhancement statutes. See Gandy v. State, 610 So.2d 1242 (Ala.Cr.App.1992). See also Stevens v. State, 659 So.2d 990 (Ala.Cr.App.1994), and also Cunuy v. State, 629 So.2d 693 (Ala.Cr.App.1993).

Therefore, Petitioner would show that the record is silent as to any prior notice by the state to enhance his sentence under §13A-12-250 or §13A-12-270 and as such he was denied due process of law. The prosecution offered no proof at sentencing of the relative distance of the Petitioner and the Petitioner was not given notice of the court's intent to invoke the statute(s). Thus this matter warrants an evidentiary hearing or a new sentencing hearing.

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GROUND THREE

WHETHER PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE TWO-PRONG TEST SET OUT IN STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) AT PLEADING AND SENTENCING PHASE OF CRIMINAL PROCEEDINGS, WHICH PREJUDICED THE PETITIONER TO A CONSTITUTIONALLY SIGNIFICANT DEGREE.

ARGUMENT

On April 9, 2001, Petitioner Roy David Heath and his retained attorney, John M. Britton, Esq., appeared before the Circuit Court of Russell County to withdraw his prior plea(s) of not guilty on all counts and entered a plea of guilt to the offenses of Distribution of Controlled Substances in Case No. CC-01-030 and Distribution of Controlled Substances (Count 1), and Unlawful Possession of Marijuana; first degree (Count 2) in Case No. CC-01-036. The Court allowed Petitioner Heath to withdraw his prior plea(s) of guilt on all counts and a sentencing hearing was scheduled for May 31, 2001.

Petitioner Heath was sentenced on May 31, 2001 in Case No. CC01-030 for thirty years in the state penitentiary for the Distribution of Controlled Substances. This thirty year sentence was to include a five year enhancement pursuant to §13A-12-250 (sale within three miles of a school campus), and another five year enhancement pursuant to §13A-12-270 (sale within three miles of a public housing project). Petitioner Haeth was also sentenced to a thirty year prison term in Case No. CC-01-036 for the Distribution of Controlled Substances (Count One). This thirty year sentence includes a five year enhancement pursuant to §13A-12-250 (sale within three miles of a school) and

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an additional five years pursuant to §13A-12-270 (sale within three miles of a public housing project). Petitioner Heath was given a third thirty-year sentence for the Unlawful Possession of Marijuana; first degree (Count Two) in Case No. CC-01-036. No enhancement(s) were applied in the possession case.

Petitioner Roy David Heath was fully prepared to take his case before a jury of his peers. Petitioner believed that the distribution charges pending against him were in error and that he could be vindicated at trial. Attorney John M. Britton was retained by Petitioner Heath. Attorney Britton came to the Petitioner and advised him that he had spoke with the district attorney's office and that a possible plea agreement had been reached. Attorney Britton told Heath that upon his withdrawal of his not guilty pleas and subsequent plea of guilt to all pending charges that the State would sentence him to a prison term of twenty years. No discussion about enhancements took place between the Petitioner and Attorney Britton. Based on the information and understanding of the terms of the plea agreement supplied by Attorney Britton, Petitioner withdrew his prior not guilty pleas and entered pleas of guilt to all pending cases with the belief that he was going to receive a twenty year prison term on all three cases and that the sentence(s) would run concurrently with one another. Petitioner did not agree to any form of stipulation to any enhancements, either under the HFOA or the drug enhancements of §13A-12-250 or §13A-12-270. Attorney Britton advised his client that if any enhancement(s) were to apply, they would run concurrently with the twenty-year sentence. This was the understanding and basis for Petitioner to enter his plea(s) of

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guilty in this case. Throughout the sentencing process, Attorney Britton did not make one objection. Mr. Britton failed to object to the sentence of the Petitioner and the lack of notice by the State as to its intent to proceed with the enhancements mandated by §13A-12-250 and §13A-12-270. Attorney Britton failed to object to the thirty-year sentence imposed upon the Petitioner where there were no enhancement(s) applied.

The Petitioner has the right to enjoy a reasonably effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 90 S.Ct. n. 12, 25 L.Ed.2d 763 (1970); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) wherein the Court stated:

"Counsel owes a duty to the defendant to conduct an independent investigation of the facts, circumstances, pleadings and laws involved. Rummel v. Estelle, 590 F.2d 103, 104 (5th Cir. 1979), and a particular duty to consult with the defendant on all important decisions, and to keep the defendant informed of all important decisions or developments in the course of the prosecution." Id. 104 S.Ct. at 2056, 80 L.Ed.2d at 689.

The Strickland Court set out a two (2) prong test for establishing ineffective assistance of counsel:

- (1) Counsel's performance was deficient; and
- (2) The deficient performance prejudiced the defense.

Id. 466 U.S. at 687, 104 S.Ct. at 2064.

The following facts and actions or omissions of duty by trial attorney John M. Britton, Esq., but not limited to these alone, show a prima facie case of ineffective assistance of counsel, which prejudiced the Petitioner in all critical stages of the criminal proceedings in

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this instant case.

1. Trial counsel Britton misinformed the Petitioner as to the terms and sentence(s) involved in the plea agreement negotiated by him and the State. Attorney Britton told Petitioner Heath that if he would withdraw his prior pleas of guilt to all pending charges and enter a plea of guilt to all charges, that the State would agree to recommend a sentence with an aggregate term of only twenty (20) years. No enhancements were discussed nor were there any agreement(s) made to any stipulation of terms of the negotiated plea agreement. Based upon the misinformation supplied to him by his attorney, John M. Britton, Petitioner Heath withdrew his prior plea(s) of not guilty and entered plea of guilt to all pending charges. Petitioner Heath was fully prepared to take his case before a jury of his peers. In United States v. Rhodes, 913 F.2d 839, 843 (10th Cir. 1990) the Court held that: "[a] plea may be involuntary when an attorney 'materially misinforms the defendant of the consequences of the plea'". See also Alderman v. State, 615 So.2d 640 (Ala. Cr. App. 1992). This error by counsel prejudiced the Petitioner because there is a reasonable probability that had the Petitioner been properly advised as to the sentence of thirty years which he is now serving, he would not have plead guilty and would have insisted on going to trial. See Strickland, supra.

2. Attorney John Britton failed to raise any objection at sentencing to the State's failure to give prior notice of its intent to enhance the sentence of the Petitioner by invoking the statute(s) §13A-12-250 and §13A-12-270 of the Code of Alabama 1975. The Alabama Court of Criminal Appeals has held that: "The application of §13A-12-250, like the application of the HFOA, is mandatory." Olsen v. State, 586 So.

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2d 54 (Ala.Cr.App.1991).

Attorney Britton failed to recognize that the record was debued of the State's notice of intent to seek enhancement of the Petitioner's sentence under the "schoolyard statute" and the "housing project statute". Had Attorney Britton recognized this error on the part of the State, he should have objected at the time of sentencing. Petitioner Heath was unaware that his plea of guilt would subject him to any enhancement of the twenty year sentence he had previously agreed to. See Miller v. State, 673 So.2d 819 (Ala.Cr.App.1995). Attorney Britton failed to properly advise the Petitioner that he even may be subject to any enhancement(s) either under §13A-12-250 or §13A-12-270.

Petitioner Heath contends that the actions or inactions of Attorney John Britton prejudiced him in that had he not been led to believe that he would only be sentenced to twenty years in prison rather than thirty years in prison, Petitioner would not have withdrawn his prior pleas of not guilty to all charges and would have insisted on going to trial. Attorney Britton deliberately withheld the fact that Heath might be facing additional time beyond the twenty year sentence that the Petitioner believed he would receive in this case. Therefore, Petitioner has met the "prejudice" requirement set out in the Strickland v. Washington, supra, Court. See also Hatcher v. State, 570 So.2d 1273 (Ala.Cr.App.1990).

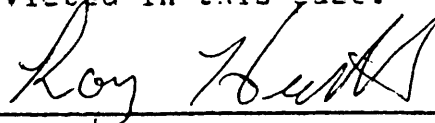
Therefore, Petitioner is due to be granted relief in this matter.

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RELIEF SOUGHT

Petitioner Roy David Heath has presented meritorious claims which would entitle him to relief. Ex parte Williams, 651 So.2d 569 (Ala.1992). The Petitioner requests that an evidentiary ~~hearing~~ be set and that counsel be appointed to represent him at said hearing.

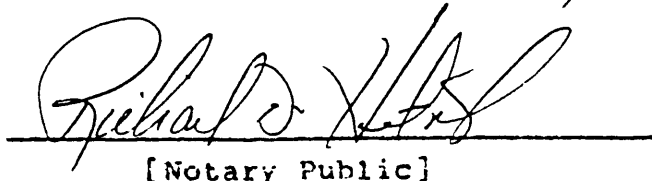
Petitioner avers that all statements and facts set out herein are true and correct. Also, Petitioner claims that he is innocent of the crimes for which he now stands convicted in this case.



Roy David Heath, Petitioner pro se
AIS #217344, Dorm #7
Fountain Correctional Center
Fountain 3800
Atmore, Alabama 36503-3800

STATE OF ALABAMA)
Escambia COUNTY) ss.

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 31ST DAY OF May,
2002.


[Notary Public]

My Commission Expires: Nov 7, 2003.

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STATE OF ALABAMA
PLAINTIFF,

VS.

ROY DAVID HEATH
DEFENDANT.

IN THE CIRCUIT COURT OF
RUSSELL COUNTY, ALABAMA

CASE NO.: CC 01-30.60
01-36.60

ORDER

The Petitioner, Roy David Heath, has filed a petition for relief from convictions and sentences pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. Petitioner cites three grounds for relief in his petition.

1. Plea of Guilty not voluntary and knowing.
2. Failure of the State of Alabama to notify Defendant of enhancement provisions of sections 13A-12-250 and 13A-12-270 of the Code of Alabama, 1975 as amended.
3. Ineffective assistance of trial counsel.

Upon consideration of the pleadings and the Court records, this Court finds that the Petitions for relief are due to be dismissed.

Petitioner, Roy David Heath claims that the pleas of guilty that he entered were not voluntarily and knowing. Upon entry of his plea of guilty, the Defendant stated to the court that he entered into these pleas of guilty voluntarily and that he understood the Ireland form which he signed and which was submitted to the court. Petitioner also signed the plea bargain agreement, which he signed and submitted to the court. He also stated that he was satisfied with the legal representation he had received from the Hon. John Britton. A copy of the plea bargain agreement is made part of this order.

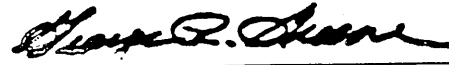
Petitioner waived any further right to notification of enhancement of sentence when he entered into the plea bargain

agreement and entered pleas of guilty. Petitioner stipulated he had three prior felony convictions and the State of Alabama would not have to make further proof of these convictions at sentencing. Neither of his two sentences exceeded the maximum as allowed by law under Alabama's Habitual Offender Act.

Petitioner was represented on appeal of the conviction's and sentences by the Hon. Charles E. Floyd, III. The issue of ineffective assistance of trial counsel was not raised in a Motion for New Trial or on appeal. This claim is barred.

It is therefore ORDERED, ADJUDGED AND DECREED that the Petitions for relief are hereby dismissed.

DONE this the 16th day of July 2002.



JUDGE, CIRCUIT COURT

In The Alabama Court Of Criminal Appeals

ROY DAVID HEATH,
Appellant,

CASE NO. CC-01-0301 (C-01-036)

vs.
State of Alabama,
Appellee,

(On Appeal From The Circuit Court
Of Russell County Alabama)

Motion For Stay

Appellant Roy David Heath, Respectfully moves this Honorable Court, pursuant to BREWSTER v. STATE, 681 So.2d 329 (ALA. Crim. App. 1992), to stay the above referenced appeal pending petition of Relief From Conviction and Sentence under AL.R. Crim. P. 32. As reasons for this motion, the Appellant would show the Court as follows;

- (1) Appellant has other issues that he would incorporate before this Honorable Court in a Rule 32 Petition;
- (2) That these issues would show that the Petitioner never pled Guilty to the charges before this Honorable Court;
- (3) That after the ruling on this second Rule 32 Petition has been rendered, then these issues can be combined into one brief;

Wherefore Primes considered, Petitioner prays that this Honorable Court Grant this said petition, that Petitioner may be insured that Justice has been fairly administered;

Done this 23rd day of August 2002;

Respectfully Submitted,
Roy David Heath

RUSSELL CO., ALA.
CIRCUIT COURT
2002 SEP -5 AM 9:37

FILED IN OFFICE

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Mr. Roy David Henth #217344-4-CELL
JAIL
ATTN: Warden 3800
ATMOS, ALABAMA-36503

THIS CORRESPONDENCE IS THE PROPERTY OF THE U.S. DEPARTMENT OF CORRECTIONS AND IS LOANED TO YOU. IT IS TO BE RETURNED TO THE U.S. DEPARTMENT OF CORRECTIONS AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM. ANY VIOLATION OF THESE TERMS WILL BE CONSIDERED A VIOLATION OF THE PRISON RULES AND WILL BE PUNISHED ACCORDINGLY.

Check Of:
In The Circuit Court Of Russell County
P.O. Box 518
Phenix City, Alabama-36868-0518



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In The Court Of Criminal Appeals
State Of Alabama

FILED IN OFFICE
SEP-5 PM12:47
CLERK OF COURT
JULY 11, 2005

Roy David Heath

Appellant

Vs.

State Of Alabama,

Appellee

Case No. CC-01-030, CC-01-036

Notice Of Appeal:

The appellant in the above styled action hereby gives notice of appeal to the Court of Criminal Appeals from the decision rendered in this action on _____ whereas the Trial Judge dismissed appellant's petition.

Dated this 23rd day of AUGUST 2002;

Roy David Heath

Certificate Of Service:

I hereby certify that I have served all parties with a true and correct copy of the foregoing by the same being placed in the U.S. mail all postage paid.

Dated this 23rd day of AUGUST 2002;

Roy David Heath

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State of Alabama Unified Judicial System Form ARAP-26 (front) 8/91	COURT OF CRIMINAL APPEALS DOCKETING STATEMENT	Criminal Appeal Number _____
--	--	---------------------------------

A. GENERAL INFORMATION:

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF RUSSELL COUNTY
ROY DAVID HEATH, Appellant

V. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF State of Alabama

Case Number <u>CC-01-030, CC-01-036</u>	Date of Complaint or Indictment <u>N/A</u>	Date of Judgment/Sentence/Order <u>N/A</u>
Number of Days of Trial/Hearing <u>N/A</u> Days	Date of Notice of Appeal Oral: _____ Written: <u>AUGUST 23, 2002</u>	
Indigent Status Requested: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

B. REPRESENTATION:

Is Attorney Appointed or Retained? ☒ Appointed ☐ Retained. If no attorney, will appellant represent self? ☐ Yes ☐ No

Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary) <u>ROY DAVID HEATH PRO-SE</u>		Telephone Number _____	
Address <u>FOUNTAIN 3800</u>	City <u>ATMORE, ALABAMA</u>	State <u>ALABAMA</u>	Zip Code <u>36503</u>

C. CODEFENDANTS: List each CODEFENDANT and the codefendant's case number.

Codefendant <u>N/A</u>	Case Number <u>N/A</u>
Codefendant	Case Number
Codefendant	Case Number

D. TYPE OF APPEAL: Please check the applicable block.

- | | | | |
|--|--|--|---|
| 1 <input checked="" type="checkbox"/> State Conviction | 4 <input type="checkbox"/> Pretrial Order | 7 <input type="checkbox"/> Juvenile Transfer Order | 10 <input type="checkbox"/> Other (Specify) _____ |
| 2 <input type="checkbox"/> Post-Conviction Remedy | 5 <input type="checkbox"/> Contempt Adjudication | 8 <input type="checkbox"/> Juvenile Delinquency | |
| 3 <input type="checkbox"/> Probation Revocation | 6 <input type="checkbox"/> Municipal Conviction | 9 <input type="checkbox"/> Habeas Corpus Petition | |

E. UNDERLYING CONVICTION/CHARGE: Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

- | | | |
|---|--|--|
| 1 <input type="checkbox"/> Capital Offense - § _____ | 6 <input type="checkbox"/> Trafficking in Drugs - § _____ | 11 <input type="checkbox"/> Fraudulent Practices - § _____ |
| 2 <input type="checkbox"/> Homicide - § _____ | 7 <input type="checkbox"/> Theft - § _____ | 12 <input type="checkbox"/> Offense Against Family - § _____ |
| 3 <input type="checkbox"/> Assault - § _____ | 8 <input type="checkbox"/> Damage or Intrusion to Property - § _____ | 13 <input type="checkbox"/> Traffic - DUI - § _____ |
| 4 <input type="checkbox"/> Kidnapping/Unlawful Imprisonment - § _____ | 9 <input type="checkbox"/> Escape - § _____ | 14 <input type="checkbox"/> Traffic - Other - § _____ |
| 5 <input type="checkbox"/> Drug Possession - § _____ | 10 <input type="checkbox"/> Weapons/Firearms - § _____ | 15 <input type="checkbox"/> Miscellaneous (Specify): _____ |

F. DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

G. TRANSCRIPT:

- Will the record on appeal have a reporter's transcript? ☐ Yes ☐ No
- If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. AUGUST 23, 2002 (Date)
- If the answer to question "1" is "No":
 - Will a stipulation of facts be filed with the circuit clerk? ☐ Yes ☐ No
 - Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? ☐ Yes ☐ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b).

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Form ARAP- 26 (back) 8/91			COURT OF CRIMINAL APPEALS DOCKETING STATEMENT		
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H. POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rules 20.3 and 24.4 (ARCP)):

DATE OF FILING			TYPE C. POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year
5	21	2002	RULE 32 PETITION			

I. NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

(1) Whether Petitioner's Guilty Plea Was Voluntarily And Knowingly Entered Where Petitioner Was Sentenced Contrary To His Understanding Of A Pardon Negotiated Plea Agreement:

(2) Whether Petitioner's Due Process Rights Were Violated By The State's Failure To Notify The Petitioner That The State Intended To Seek Enhancement Of Petitioner's Sentence For Distribution Of A Controlled Substance Based On The Fact That The Sale Allegedly Occurred Within A Three-Mile Radius Of A School And Three Miles Within Housing Project:

(3) Ineffective Assistance Of Trial And Appellant Counsel;

J. ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

(1) Whether Petitioner's Guilty Plea Was Voluntarily And Knowingly Entered Where Petitioner Was Sentenced Contrary To His Understanding Of A Pardon Negotiated Plea Agreement:

(2) Whether Petitioner's Due Process Rights Were Violated By The State's Failure To Notify Petitioner That The State Intended To Seek Enhancement Of Petitioner's Sentence For Distribution Of A Controlled Substance Based On The Fact That The Sale Allegedly Occurred Within A Three Mile Radius Of A School And Within A Three-Mile Housing Project:

(3) Ineffective Assistance Of Trial And Appellant Counsel;

K. SIGNATURE: Ray David Heath

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State of Alabama Unified Judicial System Form ARAP-1C 3/91	REPORTER'S TRANSCRIPT ORDER - CRIMINAL <small>(See Rules 10(c) and 11(c) of the Alabama Rules of Appellate Procedure (A.R.A.P.))</small>	Criminal Appeal Number _____
--	--	---------------------------------

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☒ **CRIMINAL COURT** ☐ **DISTRICT COURT** ☐ **JUVENILE COURT** OF RUSSELL COUNTY

v. ☒ **STATE OF ALABAMA** ☐ **MUNICIPALITY OF** State of Alabama, Appellant

Case Number: CC-01-030, CC-01-036 Date of Judgment/Verdict/Order: _____

Date of Notice of Appeal: _____ Indigent Status Granted: ☒ **Yes** ☐ **No**

Order: _____ Written: August 23, 2002

PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 10(a)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, CODE OF ALABAMA 1975).

Roy David Heath

August 23, 2002

Roy David Heath

PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED. Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A.R.A.P.)):

MARK PROCEEDINGS REQUESTED:

- A. ☐ **TRIAL PROCEEDINGS** - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.
- B. ☐ **ORGANIZATION OF THE JURY** - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs. (See Rule 19.4, A.R.A.P.)
- C. ☐ **ARGUMENTS OF COUNSEL** - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs. (See Rule 19.4, A.R.A.P.)

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL (ATTACH ADDITIONAL PAGES IF NECESSARY):

ADDITIONAL PROCEEDINGS REQUESTED	DATE	COURT REPORTER(S)
D. _____	_____	_____
E. _____	_____	_____
F. _____	_____	_____
G. _____	_____	_____

IMPORTANT NOTICE: The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to be effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to any proceeding in this case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" is not sufficient. (See Rule 10(c)(2), A.R.A.P.)

PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT THAT STATUS HAS NOT BEEN REVOKED; OR (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

Roy David Heath

August 23, 2002

Roy David Heath

DISTRIBUTION: Original filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals, (2) the District Attorney.

AC5871

ALABAMA JUDICIAL DATA CENTER

NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS
 BY THE TRIAL COURT CLERK
 IN THE CIRCUIT COURT OF RUSSELL COUNTY
 STATE OF ALABAMA VS HEATH ROY DAVID JUDGE: GE

L APPEALS

000077

GE A, GREENE

APPEAL DATE: 08/23/2002

INDIGENCY STATUS:

GRANTED INDIGENCY STATUS AT TRIAL COURT: ☒ YES ☐ NOAPPELLATE COUNSEL ADMITTED TO W/D ON APPEAL: ☐ YES ☒ NOINDIGENT STATUS INVOKED ON APPEAL: ☐ YES ☒ NOINDIGENT STATUS GRANTED ON APPEAL: ☐ YES ☒ NO

DEATH PENALTY: NO

APPEAL TYPE: RULE 32 PETITION

THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E. WRIT OF HABEAS CORPUS, ETC) OR FROM ANY OTHER ISSUED

RULE 32 PETITION, THE TRIAL JUDGE.

CO/CASE NUMBER: 87/CC 2001 000036.60

ORDER ENTERED(DATE): 07172002 PETITION: X DISMISSED

DENIED GRANTED

POST-JUDGMENT MOTIONS FILED:

OT FILED

OT DENI

CON BY AGREE

MOTION FOR NEW TRIAL

MOTION FOR JUDGE OF ACQUIT

MOTION TO W/D GUILTY PLEA

MOTION FOR ATTY TO W/DRAW

OTHER

COURT REPORTER(S):

ADDRESS:

APPELLATE COUNSEL #1:

ADDRESS:

PRO GE

00000

PHONE NUMBER:

000-000-0000

APPELLATE COUNSEL #2:

ADDRESS:

PHONE NUMBER:

APPELLANT (PRO GE):

ADDRESS:

HEATH ROY DA D
217344
ATMORE

AL 365033800

AIS #:

APPELLEE (IF CITY APPEAL):

ADDRESS:

I CERTIFY THAT THE INFORMATION PROVIDED
 ABOVE IS ACCURATE TO THE BEST OF MY
 KNOWLEDGE AND I HAVE SERVED A COPY OF
 THIS NOTICE OF APPEAL ON ALL PARTIES TO
 THIS ACTION ON THIS 6th DAY OF Sept. 02

OPERATOR: SHG
 PREPARED: 09/06/2002

Kathy Carter
 AIR COURT CLERK

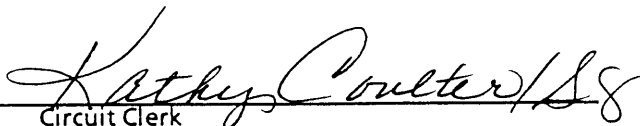
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State of Alabama Unified Judicial System Form ARAP- 14 11/91	CERTIFICATE OF COMPLETION AND TRANSMITTAL OF RECORD ON APPEAL BY TRIAL CLERK	Appellate Case Number _____
TO: THE CLERK OF THE COURT OF CRIMINAL APPEALS OF ALABAMA		DATE OF NOTICE OF APPEAL: AUGUST 23, 02
APPELLANT ROY DAVID HEATH		
v. STATE OF ALABAMA		

I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (a single volume of 78 pages) (_____ volumes of 200 pages each and one volume of _____ pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of briefs.

I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.

Dated this 6TH day of NOVEMBER, 19 2002


Circuit Clerk

RUSSELL COUNTY, ALABAMA